

11044293767

RECEIVED
FEDERAL ELECTION
COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2011 MAY 11 P 4: 35

2011 MAY 11 PM 3: 38

In the Matter of)

CELA

MUR 6369)

DISMISSAL AND CASE

RANDY HULTGREN FOR CONGRESS)

CLOSURE UNDER THE

CLIFFORD A. BROWN,)

ENFORCEMENT PRIORITY

AS TREASURER)

SYSTEM

FRIENDS FOR HULTGREN)

RANDY HULTGREN)

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6369 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6369.

In this matter, the complainant, Catherine A. Hamilton, asserts that respondents Randy Hultgren for Congress and Clifford A. Brown, in his official capacity as treasurer ("Federal Committee"), Friends for Hultgren ("State Committee"), and then-congressional candidate

1 Randy Hultgren¹ violated the Act because the State Committee made a \$1,000 contribution to the
2 Federal Committee on September 30, 2009, and again on January 21, 2010. The complaint
3 further alleges that the Federal Committee failed to report the receipt of the second contribution.
4 The complaint requests the Commission investigate the allegations, enjoin respondents from
5 further violations, and impose the maximum penalty against the respondents.

6 In its response, the Federal Committee acknowledges that it received contributions from
7 the State Committee, but explains that they were accepted in error and refunded to the State
8 Committee on September 3, 2010. The Federal Committee also acknowledges that it failed to
9 report the \$1,000 contribution it received on January 21, 2010 on its April 2010 Quarterly Report
10 due to a "clerical error."

11 In addressing the contributions by the State Committee, we observe that the Act prohibits
12 a federal candidate, a candidate's agent, and entities established, financed, maintained or
13 controlled by, or acting on behalf of, a candidate from soliciting, receiving, directing,
14 transferring or spending funds in connection with a Federal election unless the funds are subject
15 to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A).
16 *See also* 11 C.F.R. § 110.3(d) (prohibiting transfers of funds or assets from a candidate's
17 campaign committee for a non-federal election to his or her campaign committee for a federal
18 election).

19 Here, the Federal Committee acknowledged that it received \$2,000 in contributions from
20 the State Committee, but issued a refund on September 3, 2010. Illinois law permits candidate
21 political committees to accept contributions up to \$5,000 from any individual; \$10,000 from any

¹ Mr. Hultgren represents Illinois' 14th Congressional District.

11044293768

1 corporation, labor organization, or association; or \$50,000 from a candidate political committee
2 or political action committee. *See* ILL. COMP. STAT. 9/8.5(b) (2011). Therefore, it appears the
3 Federal Committee violated the Act because it is possible that the State Committee's funds may
4 have been outside the limits, prohibitions, and reporting requirements of the Act.² *See* 2 U.S.C.
5 § 441i(e)(1)(A). *See also* 11 C.F.R. § 110.3(d). Likewise, in reviewing the Federal Committee's
6 April 2010 Quarterly Report and subsequent amendments, it also appears that the Federal
7 Committee violated the Act by failing to report the receipt of the January 21, 2010 contribution,
8 pursuant to 2 U.S.C. § 434(b). The Federal Committee admits its failure to report the
9 contribution from January 21, 2010, and it has reported the refund in its amended October 2010
10 Quarterly Report.

11 Thus, it appears that the Federal Committee violated the Act and 11 C.F.R. § 110.3(d) by
12 accepting \$2,000 in prohibited contributions from the State Committee and by failing to report a
13 contribution on its January 21, 2010. We note, however, the Federal Committee has admitted to
14 the violations and has taken remedial measures by refunding the prohibited contributions to the
15 State Committee and reporting the refund on its amended October 2010 Quarterly Report.
16 Accordingly, under EPS, the Office of General Counsel has scored MUR 6369 as a low-rated
17 matter and therefore, in furtherance of the Commission's priorities as discussed above, the Office
18 of General Counsel believes that the Commission should exercise its prosecutorial discretion and
19 dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

² Compare 2 U.S.C. § 441b(a) (prohibiting corporations or labor organizations from making contributions in connection with any election) with ILL. COMP. STAT. 9/8.5(b) (2011) (allowing candidate political committees to receive contributions of up to \$10,000 from corporations, labor organizations, or associations).

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6369,
close the file, and approve the appropriate letters.

Christopher Hughey
Acting General Counsel

5/6/11
Date

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Philip A. Olaya
Attorney

11044293770